



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners

From: Kelly Wyatt, Deputy Planning Director
Michael Zehner, Director of Planning and Development

Date: August 25, 2020

Subject: Consideration of a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of Commercial Mixed-Use designations. (Attachment F-3)

OVERVIEW AND BACKGROUND

Cahoon and Kasten Architects, PC has submitted the attached text amendment application on behalf of Sumit Gupta of Legacy Home Services Inc. The requested amendment seeks to amend Section 7.32 of the UDO, and specifically Section 7.32.2., to add the Furniture Store use as an allowable use for all Commercial Mixed-Use designations; this would include the following use types: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Centers. Currently, and without this amendment, a Furniture Store use would not be allowed to be incorporated as part of one of the aforementioned mixed-use uses. Generally, the various mixed-use uses contemplate and allow for multiple independent entities and/or uses to occupy a single building or property.

It is also important to note that furniture stores are an allowed use only within the C-2 zoning district. Therefore, it would be within the C-2 district only that a furniture store could be incorporated as part of a mixed-use use. With the exception of the Commercial with Accessory Residential use, all other mixed-use use designations require a conditional use permit within the C-2 district.

Applicable definitions are as follows:

- **Commercial with accessory residential** means a principal commercial use with accessory single-family residences either attached or detached. This use could include single-family residential, duplex, or multiple detached single-family residential dwelling units configured in a cottage court arrangement.
- **Mixed-use development** means a single building containing more than one type of land use or single development of more than one building, and use, under common ownership, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas. Mixed use is defined by a combination of professional offices, personal services, indoor recreation facilities, retail, and/or restaurant uses in combination with residential development.

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- **Multiple principal uses** means multiple, unrelated, primary or predominate uses located within one building.
- **Shopping Center** means a single, commercial structure which includes or is designed to include two or more establishments with a combined floor area of at least 10,000 square feet planned for a single or contiguous lot.
- **Furniture store** means an establishment that sells goods and/or movable objects, intended to support various human activities such as seating, eating, and sleeping, for furnishing or improving housing units that make a room or other area ready for occupancy.

Additionally, there is a definition for furniture showroom, as follows, but this is not identified as a separate use in the UDO:

- **Furniture showroom** means a retail establishment that utilizes large, open floor areas to display furniture or mattresses.

While it is important to remember that text amendments are not site specific, this text amendment has been proposed with the intent to seek a conditional use permit to incorporate the use as part of a Multiple Principal Uses use of the existing structure located at 205 East Baltic Street (formerly His Dream Center), situated within the C-2 zoning district; this application has been filed and is expected to come before the Planning Board and Board of Commissioners respectively for review and recommendation following resolution of the proposed text amendment. The approval of the subject text amendment does not commit any future action on the subsequent conditional use permit.

POLICY CONSIDERATIONS

While staff has not identified policies within the Town's Comprehensive Plan specific to "Furniture Stores" in association with mixed-use uses, the following policies are generally relevant and should be taken into consideration:

LU-9; pg. 3-20 – Encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community.

EC-1; pg. 3-117 – Develop and promote a sustainable economy that supports a high quality of life for residents and visitors without compromising the integrity of natural and cultural resources and a sense of place.

EC-3; pg. 3-117 – Meet the infrastructure and service needs of the community at appropriate levels as the community continues to grow.

EC-8; pg. 3-123 – Enhance economic health and increase employment opportunities through business retention and expansion.

STAFF RECOMMENDATION

In review of this text amendment application, Staff generally has no concern with listing the use of “Furniture Store” as an allowable use for all Commercial Mixed-Use designations and believes it is consistent with applicable policies. As referenced above, this would only be applicable within the C-2 zoning district, and, with the exception of the Commercial with Accessory Residential use, would require a conditional use permit. Therefore, Staff recommends adoption of the proposed text amendment.

PLANNING BOARD RECOMMENDATION

At their July 21, 2020 meeting the Planning Board voted unanimously to recommend approval of the requested text amendment as proposed.

With regard to the Board of Commissioner’s review, Staff recommends consideration of the following UDO provisions:

3.5.3. Action by the Planning Board.

3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.

3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

3.5.4. Action by the Board of Commissioners.

Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of

Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.

3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.

3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.3. A statement approving the amendment and containing at least all of the following:

3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional

request or application for amendment to the Comprehensive Plan.

3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

3.5.4.5.3.3. Why the action was reasonable and in the public interest.

3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:

3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.

Attachments:

1. Proposed Ordinance; and
2. Application from Cahoon and Kasten Architects, PC